

SENATE BILL 3039

By Crowe

AN ACT to amend Tennessee Code Annotated, Title 6;  
Title 7; Title 12; Title 13; Title 29; Title 49 and Title  
68, relative to the power and use of eminent  
domain to take land.

WHEREAS, In response to the recent decision by the United States Supreme Court interpreting the authority and power of government to take private property for public use as described in the Fifth Amendment to the United States Constitution and providing that individual states may restrict the exercise of such power, the General Assembly intends to ensure that Tennessee governmental bodies vested with all or any part of the power of eminent domain shall not use such power to take the private property of any person for the private use of another, except as may be provided in this act; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 17, is amended by adding the following as a new part:

§ 29-17-1301. Except as provided in Sections 29-17-1304 and 29-17-13 any municipality, county, university, housing authority, water and wastewater treatment authority, the state of Tennessee or any other governmental subdivision or entity may have full power and authority to acquire by purchase the necessary lands or rights, easements, or interests therein or, for the purposes for which private property may be acquired by condemnation, may proceed as provided by law and such proceedings shall be governed by the general laws of this state pertaining thereto.

§ 29-17-1302. As used in this part, "eminent domain" means the authority conferred upon the government, and those entities to whom the government delegates such authority, to condemn and take, in whole or in part, the private property of another

provided it is taken for public use and payment of just compensation is made for such property.

§ 29-17-1303. "Public use" also includes "public necessity" and means public necessity of the extreme sort warranted by facts of independent public significance. It does not include private ownership or lease for private economic development or redevelopment.

§ 29-17-1304. A municipality, county, university, housing authority, water and wastewater treatment authority, the state of Tennessee or any other governmental subdivision or entity may not condemn and take the private property of a person or other nongovernmental entity by use of the power of eminent domain if such taking is for the purpose of private retail, office commercial, industrial or residential development, or primarily for the purpose of improving tax revenue or the tax base, or promote economic development.

§ 29-17-1305. If property condemned or taken as permitted by this part is not used for the purpose or purposes for which it was condemned or for some other authorized public use, and the condemning entity subsequently decides to sell it, the property shall be first offered for sale to the person or persons from whom the property was condemned or taken, or such person's or persons' ascertainable heirs or assigns. Such property shall be offered at the price which was paid for the property, less such amount, if any, as the person shall show by good and sufficient documentation to be the amount of income and transaction taxes, if any, actually paid in connection with the property. If the offer is not accepted within ninety (90) days from the date it is made, the property may be sold to any other person or persons but only at public sale after legal notice is given as provided by law.

§ 29-17-1306. The provisions of this part shall be strictly construed in favor of the individual or entity whose property is being taken and against the governmental or other entity exercising the power of eminent domain.

§ 29-17-1307. When determining whether any taking of private property by the use of eminent domain is a violation of this part, the burden shall be on the governmental or other entity exercising the right of eminent domain to show that the taking was not for the purpose of economic development or private redevelopment.

§ 29-17-1308. When determining whether any taking of private property by the use of eminent domain is a violation of this part or Article 1, § 21 of the Constitution of Tennessee, the taking of property for the purpose of private development or private redevelopment shall not be considered a “public use” of such property.

SECTION 2. Tennessee Code Annotated, Section 13-20-201, is amended by deleting the section in its entirety and substituting instead the following:

As used in this chapter:

(a) “Blighted areas” are areas (including slum areas) with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, lack of ventilation, light and sanitary facilities, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community. “Welfare of the community” does not include the need for increased tax revenues.

(b) “Dilapidation” means extreme deterioration and decay due to lack of repairs to and care of the area.

SECTION 3. This act shall take effect July 1, 2006, the public welfare requiring it.